UNITED STATES DISTRICT COURT 1 2 NORTHERN DISTRICT OF CALIFORNIA 3 SAN FRANCISCO DIVISION 4 XIU FANG LUO, No. C 08-0340 PJH Plaintiff, 5 6 v. PROPOSED ORDER MICHAEL CHERTOFF, Secretary, Department of Homeland Security; EMILIO) 7 GONZALEZ, Director, United States 8 Citizenship and Immigration Services; 9 JOSEPH P. RUSSONIELLO,* United States Attorney, California Northern District; ROSEMARY MELVILLE, San 10 Francisco District Director; ROBERT S. MUELLER, III, Director of the Federal 11 Bureau of Investigation, 12 Defendants. 13

On March 10, 2006, Plaintiff filed an application for naturalization with the U.S. Citizenship and Immigration Services ("USCIS"). Declaration of Randall Ricks ("Ricks Decl."), ¶ 10. She was interviewed by the USCIS on July 18, 2006. <u>Id.</u> On January 17, 2008, Plaintiff brought this action pursuant to 8 U.S.C. § 1447(b). The security checks and background investigations were completed on June 2, 2008. Ricks Decl., ¶ 10.

Under § 1447(b), if USCIS fails to grant or deny a citizenship application within 120 days after the date "on which the examination is conducted under" § 1446, an alien applicant may obtain a hearing on the matter in district court. Alternatively, the district court may choose to remand the matter, with appropriate instructions, to USCIS for adjudication.

Courts in this district have recognized that since March 1, 2003, the Department of Homeland Security has been the agency responsible for implementing the Immigration and Nationality Act. See 6 U.S.C. §§ 271(b)(5), 557; Konchitsky v. Chertoff, No. C-07-00294 RMW, 2007 WL 2070325, at *6 (N.D. Cal. July 13, 2007); Dmitriev v. Chertoff, No. C 06-7677 JW, 2007

*Pursuant to Fed. R. Civ. P. 25(d)(1), Joseph P. Russoniello is substituted for his predecessor, Scott Schools, as the United States Attorney for the Northern District of California.

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WL 1319533, at *4 (N.D. Cal. May 4, 2007). Accordingly, the only relevant defendants here are those within the Department of Homeland Security, and Defendants Michael B. Mukasey and Robert S. Mueller will be dismissed. Moreover, Plaintiff has failed to state any claim against the United States Attorney. Accordingly, Defendant Russoniello will be dismissed.

Plaintiff's background check is complete, and USCIS is prepared to adjudicate her

Plaintiff's background check is complete, and USCIS is prepared to adjudicate her application. Ricks Decl., ¶ 10. Accordingly, the Court will exercise its remaining option under § 1447(b), and remand the matter to the USCIS. <u>Scego v. Gonzales</u>, No. 07-0598 MJP, 2007 WL 2155724, at *2-3 (W.D. Wash. July 24, 2007).

Defendants Mukasey, Mueller, and Russoniello are hereby dismissed, and this matter is remanded to USCIS for adjudication within thirty (30) days of the date of this order. The Clerk shall close the file.

IT IS SO ORDERED.

Dated:

PHYLLIS J. HAMILTON United States District Judge

CERTIFICATE OF SERVICE

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The undersigned hereby certifies that she is an employee of the Office of the United States Attorney for the Northern District of California and is a person of such age and discretion to be competent to serve papers. The undersigned further certifies that she is causing a copy of the following document(s):

following document(s):	
	PROPOSED ORDER
to be served this date upon the party(ies) as follows:	
	FIRST CLASS MAIL by placing such envelope(s) with postage thereon fully prepaid in the designated area for outgoing U.S. mail in accordance with this office's practice.
	PERSONAL SERVICE (BY MESSENGER) I caused such envelope to be delivered by hand to the person or offices of each addressee below.
	FACSIMILE (FAX) Telephone No.: I caused each such document to be sent by facsimile to the person or offices of each addressee below.
	FEDERAL EXPRESS
	CERTIFIED MAIL
	BY E-MAIL I caused each such document to be sent by e-mail to the person or offices of each addressee below.
to the p	party(ies) addressed as follows:
63 Mei	ng Luo, Pro Se rcury Street ancisco, California 94104
	I declare under penalty of perjury under the laws of the United States of America that the
foregoi	ing is true and correct. Executed on July 23, 2008 at San Francisco, California.

MELANIE L. PROCTOR
Assistant United States Attorney